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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/550,115

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Nicolas Patrice Bernard Touchard

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EXAMINER

OWYANG, MICHELLE N

ART UNIT

PAPER NUMBER

2168

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/550,115	<b>Applicant(s)</b> TOUCHARD ET AL.	
	<b>Examiner</b> MICHELLE OWYANG	<b>Art Unit</b> 2168	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2011.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 6-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 6-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Continued Examination Under 37 CFR 1.114**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

The Action is responsive to Applicant's Request for Continued Examination (RCE) filed on 3/11/2011.

Applicant's amendment and remarks filed on 3/1/2011 with claim 1 amended and claims 3-5, 11-12 cancelled been acknowledged.

Claims 1-2, 6-10 are pending in this application.

### **Claim Objections**

2. Claim 1 is objected to for lack of antecedent basis for "the data messages (line 21)". It appears that "the data messages" is referred to "said data messages (line 4)". Proper correction is required.

### ***Examiner's Note***

3. It appears that limitations of "first event data including date and location of transmission of the data messages" and "the second event data including date and location of transmission of the data request" recited in claim 1 are addressed to non-functional descriptive material since

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they are pure data which do not impart functionality to the machine containing this data.

Accordingly, the features set forth in claim 1 do not carry any patentable weight, as they are non-functional descriptive material (In re Gulack, 703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983), In re Lowry, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994); In re Ngai, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004)). Also note MPEP 2106.01, which recites: "USPTO personnel should determine whether the claimed nonfunctional descriptive material be given patentable weight...However, USPTO personnel need not give patentable weight to printed matter absent a new and unobvious functional relationship between the printed matter and the substrate".

### **Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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4. Claims 1-2, 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (Pub No. US 2001/0032335 A1), hereinafter, in view of Stern et al. (Patent No. US 7,016,899 B1), hereinafter Stern.

Jones was cited by the Examiner in the previous office action.

With respect to claim 1, Jones discloses a method for sharing multimedia data captured by a plurality of portable devices having a built-in camera and data transmission capability means ([0013], [0047], Fig 7: provide real-time picture communication between users including sharing pictures, and the users have portable devices having built in camera).

Concerning “a server receiving data messages, said data messages being transmitted by the portable devices over a communication network and each including at least first event data, first event data including date and location of transmission of the data messages”.

Jones disclose a picture communication network subsystem receiving data messages, said data messages transmitted by the portable devices over a communication network and each including at least first event data ([0014-0015], [0041-0045], [0048], [0059]: capture images and send images, the images are associated with data such as multimedia and event data and the images are also associated with annotations), first event data including date and location of transmission of the data messages ([0017], [0069]: data such as addresses of recipient or device are associated with the image, which is part of the message); and a picture communication network subsystem includes a registry, where as the registry is a database that stores information regarding user, user devices, device network address. ([0052]).

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Jones does not explicitly disclose a server receiving data messages.

However, Stern discloses a server receiving data messages (Col. 3, lines 19-39, Fig 3: a server with database receives messages), said data messages being transmitted by the portable devices over a communication network and each including at least first event data, first event data including date and location of transmission of the data messages (Col. 3, lines 16-39, Col. 6, lines 38-59, Fig 3: messages such as email include captured images with location and environmental information).

Since both Jones and Stern are directed to capture images and managing images, it would have been obvious to one skilled in the art at the time of the invention to modify and combine the teachings of Stern in the method of Jones by correlating contextual information with images in a data processing system in order to readily recalling object or image of interest (see Stern, Col. 2, lines 35-40).

The modified and combined teachings of Jones and Stern further discloses the server linking an identifier to each of said data messages according to its first event data, and saving each of said data messages and its linked identifier in a memory (see Jones, [0045]: the image can be indexed and stored; and see Stern, Col. 3, lines 33-39, Col. 4, lines 4-7, Col. 5, lines 23-27: information of the message objects are stored in a database);

the server receiving a data request, the data request being transmitted by one of the portable devices over the communication network and comprising at least second event data, the second event data including date and location of transmission of the data request (see Jones, [0017], [0052],[0059], [0130]: sending request for images, and address is associated with the

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request; and see Stern, Col. 5, lines 25-31: selecting stored descriptions, and the description is associated with information such as location);

the server searching for at least one data message saved in the memory that is linked to an identifier that matches the second event data of the data request (see Jones, [0087],[0091], [0171], [0191-0194]: select picture from directory; and see Stern, Col. 5, lines 25-31: selecting stored descriptions is associated with searching);

the server transmitting said at least one data message saved in the memory over the communication network to said one of the portable devices (see Jones, [0014-0015], Fig 5 & 14-19: send image to recipient(s); and see Stern, Col. 5, lines 30-35, Col. 6, lines 40-67: transmitting images via printing or emailing); and

wherein the first event data and the second event data are provided by a telecommunications operator routing the data messages being transmitted by the portable devices over the communication network (see Jones, [0088], [0127-0128]: the image annotation is provided by the operator of the user device routing the image file; and see Stern, Col. 6, lines 40-67, Fig 1: transmitting images over a communication network).

With respect to claim 2, the modified and combined teachings of Jones and Stern further discloses wherein the data messages include data relative to images, video clips, sound recordings, text or any combination thereof (see Jones, Fig 1: pictures, voice, text; and see Stern, Fig 1 & 3: image with contextual information).

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With respect to claim 6, the modified and combined teachings of Jones and Stern further discloses wherein the step of the server transmitting is conditional upon whether said one of the portable devices that transmitted the data request is associated with a server subscription to a sharing service, payment of a subscription, supply of multimedia data, place of transmission of one of the data messages, or place of transmission of the data request (see Jones, [0134-0141]: server subscription and business relationship; and see Stern, Col. 6, lines 48-67: image request is associated with supplying images).

With respect to claim 7, the modified and combined teachings of Jones and Stern further discloses wherein the data request includes at least one datum indicating any one of: the server subscription to the sharing service, the payment of the subscription, the supply of the multimedia data, the place of transmission of said one of the data messages, or the place of transmission of the data request (see Jones, [0134-0141]: server subscription and business relationship; and see Stern, Col. 6, lines 48-67: image request is associated with supplying images).

With respect to claim 8, the modified and combined teachings of Jones and Stern further discloses wherein the at least one datum comprises the first event data included in the data message (see Jones, [0041-0043], [0048], [0052]: the request is related to image annotations; and see Stern, Col. 6, lines 38-67: image request is associated contextual information of the images).



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With respect to claim 9, the modified and combined teachings of Jones and Stern further discloses wherein the portable devices are cameras having sound recorders including a connection to a telecommunications network (see Jones, Fig 2; and see Stern, Col. 5, lines 13-15, Fig 1: device with camera).

With respect to claim 10, the modified and combined teachings of Jones and Stern further discloses wherein the portable devices are mobile phones comprising a viewing screen suited to image or video (see Jones, Fig 2: requests are from mobile devices; and see Stern, Fig 1: requests are from portable device).

### **Response to Arguments**

5. Applicant's arguments filed on 3/1/2011, with respect to amended claim 1, cancelled claims 3-5, 11-12, have been fully considered but are moot in view of the new ground(s) of rejection.

Applicant argued that previously cited references Jones and Beeman fail to teach "the use of event data in the form of data/location of transmission of the data messages/request messages" and the "event data is being supplied by the telecommunication operator of the communication network" as claimed in the remarks. However, in view of the claimed amendments, further review of the cited references and updating search have conducted, and new reference Stern has applied to address the claimed limitations with previously cited reference Jones. Jones discloses transmitting image file with captured image and annotations between devices over a

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communication network ([0014-0015], [0041-0045], [0048], [0059]), whereas the captured image can be indexed and stored ([0045]). Jones further discloses an image telecommunication network subsystem that comprises a registry storing user and device information for provides communication services between users including locating users in response to a query and establishing communication between users ([0052]), including information such as addresses of devices for a network communication ([0017], [0069]). Also, reference Stern discloses a server that includes a database stores pictures and contextual information (Col. 4, lines 4-7, Col. 5, lines 20-25), and messages such as email include captured picture with location and environmental information are transmitted over a communication network (Col. 3, lines 16-39, Col. 6, lines 38-59). It appears that location is associated with address, and a communication network for mobile device is associated with a telecommunication operator because according to the specification (page 7), the operator is part of a mobile phone that ensuring the routing of images data to the sever and establishes additional message data. Since, the claimed invention is directed to sharing multimedia such as images, which is from the same field of endeavor as Jones and Stern, and it appears that both Jones and Stern reasonably disclose transmitting message associated with event data that include data such as location, thus it appears that the combined teachings of Jones and Stern reasonably teach the cited claimed limitations.

Therefore, it is believed that all limitations recited in both independent and dependent claims have been properly addressed, see the claim analysis and remarks above for detail.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHELLE OWYANG whose telephone number is (571)270-1254. The examiner can normally be reached on Monday-Friday (Alternate Fridays Off): 8am-5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, TIM VO can be reached on 571-272-3642. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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